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IN THE
Supreme Court of the United States

KALAB D. WILLMAN, CORY J. FRANTZ, CLAYTON W. TURNER, DERRICK O. WILLIAMS,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

**Application for Extension of Time to File
a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Armed Forces**

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States:

Pursuant to Supreme Court Rules 13.5, 22, and 30.2, the Petitioners, Kaleb D. Willman, Cory J. Frantz, Clayton W. Turner, and Derrick O. Williams respectfully request a 60-day enlargement of time, to and including December 18, 2021, to file a Petition for a Writ of Certiorari.

Petitioners were all members of the United States Air Force who were tried, convicted, and sentenced by courts-martial. Each appealed their case to the Air Force Court of Criminal Appeals (AFCCA) seeking sentence relief from conditions they suffered that amounted to cruel and unusual punishment under the Eighth Amendment of the United States Constitution and Article 55, U.C.M.J., 10 U.S.C. § 855 (hereinafter Article 55). In each case, the AFCCA granted motions to attach evidence to the record pertaining to Petitioners' claims, but the AFCCA denied consideration of these matters during its statutorily required Article 66(c), U.C.M.J., 10 U.S.C. § 855 (hereinafter Article 66(c)) review, holding these matters were "outside the record" pursuant

to *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020). See e.g. *United States v. Willman*, No. ACM 39642, 2020 CCA LEXIS 300, at *21-25 (A.F. Ct. Crim. App. Sept. 2, 2020) (unpublished). The Court of Appeals for the Armed Forces (CAAF) granted review in each of the Petitioner's cases.

Attached to this application are copies of the CAAF's decision on direct appeal for each Petitioner's case, for which the Petitioners seek review in this Honorable Court. See Attachment A. The CAAF issued judgment in Petitioner Willman's case, the lead case, on July 21, 2021¹. See *Id.* The time for filing a petition would therefore expire on October 19, 2021, absent an extension. Consistent with Rule 13.5, this application has been filed at least 10 days before that date. Because the CAAF granted review of these cases, Petitioners respectfully submit that this Honorable Court has jurisdiction under 28 U.S.C. § 1259(3).

This case presents an important question of federal law concerning whether the service courts are violating their congressional mandate of Article 66, U.C.M.J. 10 U.S.C. § 866 by interpreting subsection (c) of that statute in such a way as to exclude from the meaning of the phrase "entire record" any matters which were not contained within an original record of trial but which were subsequently attached to the record. The CAAF erred when it held in *Jessie*, and re-affirmed Petitioners' cases, that a service CCA cannot consider matters outside the original record but later attached to the record when fulfilling its statutory responsibilities under Article 66(c) to review the legal and factual sufficiency and appropriateness of a sentence imposed at a court-martial. *Jessie*, 79 M.J. at 437. This precedent conflicts with federal civilian court practice as well as this Court's own precedent. See e.g. *United States v. Rothbard*, 851 F.3d 699, 702 (7th Cir. 2017) (allowing the record to be supplemented to address the reasonableness of the district court's

¹ The CAAF issued judgment in Petitioner Frantz's, Petitioner Turner's, and Petitioner Williams's case on August 10, 2021.

sentence); *see also Greer v. United States*, 141 S. Ct. 2090, 2098 (2021) (citing *United States v. Vonn*, 535 U.S. 55, 58-59, 74-75, 122 S. Ct. 1043, 152 L. Ed. 2d 90 (2002); *Puckett v. United States*, 556 U.S. 129, 142-143, 129 S. Ct. 1423, 173 L. Ed. 2d 266 (2009); *United States v. Dominguez Benitez*, 542 U.S. 74, 84-85, 124 S. Ct. 2333, 159 L. Ed. 2d 157 (2004); *United States v. Cotton*, 535 U.S. 625, 632-633, and n. 3, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002)) (holding “an appellate court conducting plain-error review may consider the entire record—not just the record from the particular proceeding where the error occurred.”).

The CAAF’s restrictive interpretation of the phrase “entire record” in Article 66(c) is misguided, frustrates congressional intent, and, because it forecloses service members’ ability to obtain post-trial relief in Article I military courts, will funnel more service members’ claims, without the assistance of appointed military counsel, to Article III civilian courts not as well equipped or positioned to adjudicate them. Without guidance from this Court, numerous military members in the future will be prevented from seeking redress for uniquely military issues.

Petitioners base their request for an extension of time on the following reasons:

1. Petitioners each have cases decided by the CAAF that involve identical or closely related questions. Pursuant to Supreme Court Rule 12.4, petitioners will be filing a single consolidated Petition for a Writ of Certiorari. Not only are there multiple cases, but the issues presented are factually and legally complex. Additional time is needed to confer between the parties and counsel for each party in the preparing a petition for consideration of this Honorable Court.

2. In addition, the undersigned counsel have recently been appointed to represent the petitioners in this case. Undersigned counsel were not involved in any of the previous trial or appellate proceedings and need additional time to familiarize themselves with the complex issues

of the various cases and review all relevant materials. Undersigned counsel are currently representing numerous clients before the AFCCA and the CAAF. Although undersigned counsel may be able to prioritize this case to a degree, other commitments prevent sufficiently assisting Petitioners in this matter prior to the due date for the Petition for a Writ of Certiorari.

3. Finally, the printing services utilized to print the Petition for a Writ of Certiorari must be contracted through the Department of Defense in accordance with government regulations. As Fiscal Year 2021 has just ended, funds must be allocated for Fiscal Year 2022 to pay for printing services. This process is complex and will take additional time to wait for the allocation of new funds which as of now has yet to occur. Additional time is needed to allow for the allocation of funds and the fulfillment of the contracting process in order to print Petitioners' Petition for a Writ of Certiorari.

WHEREFORE, Petitioners respectfully requests 60 additional days for the reasons outlined above, thus making the Petition for a Writ of Certiorari due on December 18, 2021.

Respectfully Submitted,

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